

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,	)	
	)	NO. CR-05-0035-LRS
Plaintiff,	)	
	)	ORDER DENYING REQUEST FOR
-vs-	)	COUNSEL AND MOTION FOR RE-
	)	CONSIDERATION OF SENTENCE
MUHAMMED ZBEIDA TILLISY,	)	
	)	
Defendant.	)	
	)	

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Muhammed Tillisy (defendant) was convicted of Conspiracy to Commit Credit Card Fraud for which judgment was entered on October 28, 2005 (Ct. Rec. 79). After careful consideration of applicable sentencing guidelines as well as the factors set out in 18 U.S.C. § 3553, a sentence of 51 months was imposed, far below the maximum which could have been imposed. The defendant's appeal to the Ninth Circuit was rejected in the unanimous memorandum decision entered on or about November 17, 2006. The appellate court expressly found that the defendant's sentence was not unreasonable. He was represented by legal counsel at all stages of the proceedings through completion of his appeal.

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1 The defendant has filed a Motion For Reconsideration of Sentence  
2 (Ct. Rec. 98) based on assertions that his condition, pseudotumor tumor  
3 celerbi, was never stable and is continuing to deteriorate. Ct. Rec. 98,  
4 at 1. Defendant further asserts that his "condition has become seriously  
5 infirm according to BOP medical records." Id. Defendant argues that  
6 under U.S.S.G. §5H1.4, he should have received home detention based on  
7 his extraordinary circumstances. Defendant requests that the court  
8 consider all available documentation and re-sentence him to a reduced  
9 term or serve the remainder in home detention.

10 As a result of the instant motion, the court requested the U.S.  
11 Marshal to make oral inquiry with the Bureau of Prisons (BOP) where  
12 defendant is housed as to his medical condition. The Marshal was advised  
13 that insofar as is presently known, no significant medical intervention  
14 has been requested or pursued. Further, at sentencing, the court did  
15 consider defendant's condition along with U.S.S.G. §5H1.4. The court has  
16 received no documentation regarding defendant's medical deterioration  
17 allegations or that the BOP has been asked to treat or was unable to  
18 treat defendant. Therefore, based on the information before it, the court  
19 must deny defendant's motion for reconsideration of sentence and request  
20 for a lesser sentence or home detention as there is indication that the  
21 BOP is unable to treat defendant's condition.

22 The defendant has also filed a Motion to Correct Sentence pursuant  
23 to Fed. R. Crim. P. 35(a) (Ct. Rec. 100) along with a request for  
24 appointed counsel (Ct. Rec. 99). That Rule provides in material part as  
25 follows:

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1 Rule 35 Correcting or Reducing a Sentence:

2 (a) Correcting Clear Error. Within 7 days after  
3 sentencing, the court may correct a sentence that  
4 resulted from arithmetical, technical or other clear  
5 error.

6 As can readily be seen, the Rule cited by the defendant does not  
7 provide a vehicle for further review and clearly indicates that the  
8 motion is untimely.

9 The official comments following Rule 35 state, in part, as follows:

10 The authority to correct a sentence under this  
11 subdivision is intended to be very narrow and to extend  
12 only to those cases in which an obvious error or mistake  
13 has occurred in the sentence, that is, errors which  
14 would almost certainly result in a remand of the case to  
15 the trial court for further action under Rule 35(a).  
16 The subdivision is not intended to afford the court the  
17 opportunity to reconsider the application or  
18 interpretation of the sentencing guidelines or for the  
19 court simply to change its mind about the  
20 appropriateness of the sentence. Nor should it be used  
21 to reopen issues previously resolved at the sentencing  
22 hearing through the exercise of the court's discretion  
23 with regard to the application of the sentencing  
24 guidelines. Furthermore, the Committee did not intend  
25 that the rule relax any requirement that the parties  
26 state all objections to a sentence at or before the  
sentencing hearing.

18 The defendant now asserts that:

19 1. The current sentence violates the holding of *Apprendi vs. New*  
20 *Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000);

21 2. Various convictions used to compute his criminal history were  
22 improperly aggregated or counted; and

23 3. The Court should have sentenced the defendant to a lesser term  
24 of between 30 and 37 months.

25 The defendant has no absolute right to appointed counsel following  
26 exhaustion of his criminal appeal(s). Given his demonstrated

1 articulation of the grounds asserted for relief and the current state of  
2 the record as well as the Ninth Circuit holding affirming the sentencing  
3 decision made herein, the request for appointed counsel is respectfully  
4 **DENIED.**

5 Because the sentence actually imposed is well below the statutory  
6 maximum, no violation of *Apprendi, supra*, has occurred. Likewise, the  
7 defendant's assertions concerning alleged improper aggregation of points  
8 on adult criminal conduct involved matters before the Court at sentencing  
9 which are now final. More importantly, the points raised either are  
10 without merit or would not result in a change of the defendant's sentence  
11 in light of the additional factors set forth in 18 U.S.C. § 3553.  
12 Finally, any reference by the Court to a sentence at the low end of the  
13 guidelines was made against a factual background and sentencing framework  
14 calling for a term of imprisonment much higher than now requested.

15 The defendant's Motion For Reconsideration of Sentence (Ct. Rec.  
16 98) is **DENIED**. The defendant's request for appointment of counsel (Ct.  
17 Rec. 99) and his Motion to Correct Sentence (Ct. Rec. 100) is **DENIED**. The  
18 defendant's file shall remain closed.

19 **IT IS SO ORDERED.** The District Court Executive is hereby directed  
20 to file this Order and furnish copies to defendant.

21 DATED this 12th day of March, 2007.

22 *s/Lonny R. Suko*

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LONNY R. SUKO  
24 UNITED STATES DISTRICT JUDGE  
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